

LAWS AND RULES REVIEW COMMITTEE
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.hawaii.gov/hirec

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes.

Date: Wednesday, October 12, 2005

Time: 9:00 a.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Present: Louis Abrams, Chair, Broker/Kauai Commissioner
Kathleen Kagawa, Vice Chair, Broker/Honolulu Commissioner
Carol Ball, Broker/Maui Commissioner
Stanley Kuriyama, Broker/Honolulu Commissioner
Michele Sunahara Loudermilk, Public/Honolulu Commissioner
Trudy Nishihara, Broker/Honolulu Commissioner (Late Arrival)
Iris Okawa, Public/Honolulu Commissioner

Calvin Kimura, Supervising Executive Officer
Neil Fujitani, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Lorene Kimura, Real Estate Specialist
Ryan Yamashiro, Real Estate Specialist
Cheryl Leong, Condominium Specialist
David Grupen, Condominium Specialist
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary

Others: Myoung Oh, Hawaii Association of REALTORS®
Nicki Ann Thompson, Hawaii Association of REALTORS®
Carol Egan, All Professional Hawaii Realty
Alicia Maluafiti, Hawaii Association of REALTORS®

Absent: Vern Yamanaka, Broker/Hawaii Island Commissioner

Call to Order: The Chair called the meeting to order at 9:01 a.m., at which time quorum was established.

Chair's Report: No Chair's report was presented.

SEO's Report:

Announcements, Introduction, Correspondence, and Additional Distribution

Additional Distribution

The following material was distributed to the Commissioners prior to the start of the meeting:

3. SEO Report
 - a. Announcements, Introduction, Correspondence, Additional Distribution
4. Program of Work, FY06
 - b. Licensing, Registration, and Certification Administration – Inactive Proposal

Addition to the Agenda

Upon a motion by Commissioner Okawa, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to add the following item to the agenda:

5. ARELLO, Other Organizations and Jurisdictions
 - a. ARELLO – Board of Directors Meeting, January 13 & 14, 2006, St. Petersburg, Florida
 - e. Consumer Federation of America – Conference, December 1-2, 2005

Announcements, Introduction, Correspondence, and Additional Distribution

Information on the celebration of Barbara Dew's real estate career was distributed to the Commissioners for their information. Ms. Dew was formerly the Chairperson of the Real Estate Commission.

Minutes of Previous Meetings

Upon a motion by Commissioner Okawa, seconded by Commissioner Ball, it was voted on and unanimously carried to accept the minutes of the September 14, 2005 Laws and Rules Review Committee meeting.

Real Estate Commission Meeting Schedule – 2006

A copy of the 2006 Real Estate Commission Meeting schedule was distributed to the Commissioners for their information.

Program of Work
FY06:

Licensing, Registration, and Certification Administration

As discussed at previous meetings, a bill amending Chapter 436B, HRS, is being proposed which would create an inactive license status for all

licensees under PVL's administration. In addition, amendments to Chapter 53, HAR, concerning fees, is being proposed. The Chair has questioned the effect of the proposals on applicants, real estate licensees, and the Commission's programs.

Chapter 436B, HRS, prevails only if the specific licensing statute and rules governing the licensed profession is silent. In the case of real estate licensees, Chapter 467, HRS, and Chapter 99, HAR, addresses inactive real estate licensees. The bill appears to have no effect on real estate licensing or the Real Estate Education Fund. Although in draft state and subject to changes, the proposal to amend Chapter 53, HAR, appears to reduce the renewal fee for inactive licensees and collect the normal renewal fees upon reactivation of license.

Real estate licensees and the number of applicants are directly related to economic conditions especially factors relating directly to real estate property. The records for the past twenty years reflect:

- a low of 13,003 licensees in 1999 to a high of 26,090 in 1990, and
- a low of 25% of all licensees inactive in 2005 and a high of 40% of all licensees inactive in 1994.

If the economy is bad, then there will be a higher percentage of inactive licensees. Inactive licensees have the same opportunities and receive the same benefits of the Commission's real estate education programs, either funded partially or totally by the Real Estate Education Fund.

The original intent for the same REEF fees assessed for active and inactive licensees was that both have access to and benefit from the educational programs offered by the Commission, which are funded by REEF.

The SEO will keep the Committee informed on more specifics as the proposals are a work in progress.

Commissioner Nishihara arrived.

Neighbor Island Outreach

The next neighbor island outreach will be held in November 2005 or January 2006, on the island of Maui or Hawaii. REB staff will work with the neighbor island Commissioners affected to determine the meeting date and location.

Commissioner's Education Program

The September 2005 issue of OpenLine and the September 2005 issue of The High Road were distributed to the Commissioners for their information.

Subcommittee on Internet Advertising/VOWs

The following information was distributed to the Commissioners for their information:

1. Inman Real Estate News, September 8, 2005 – “Justice Dept. sues NAR for antitrust;”
2. Inman Real Estate News, September 8, 2005 – “NAR backs down from policy to restrict online listings;” and
3. Department of Justice News Release, October 4, 2005 – “Department of Justice Amends Antitrust Lawsuit Against National Association of Realtors.”

Chair Abrams reported that representatives from the U. S. Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC”) were present at the ARELLO Annual Meetings to discuss what was happening. He reported that NAR had made adjustments to their internet policy but it did not satisfy the DOJ. The MLS policy is out of the Commission’s domain, but it does overlap with agency issues and the licensee’s conduct. Chair Abrams recommended that the Commissioners read the lawsuit. The Commission will continue to monitor the situation.

The SEO reported that the DOJ and FTC are looking into minimum services, rebates, VOWs issues, and other state issues which result in action against Real Estate Commissions, State Legislators, local Realtor Boards, and NAR. When questioned about why action was being taken against the real estate industry, the group was informed that any issue (including law or rules) that restricts trade, restricts choices to consumers, and restricts trade by one part of the industry while benefiting the other part is of concern. The meeting was rather contentious. There will be a one-day meeting between DOJ and FTC officials, state regulators and industry members in Washington D.C., on October 25, 2005. ARELLO is very concerned and stated to its membership that now is not the time to amend law or rules that remotely touch the areas of concern.

Chair Abrams reported that the antitrust lawsuit involved the data that was being provided to the MLS. It was felt to be anticompetitive. The federal government felt that once information was submitted to the MLS, the information should be considered public.

Subcommittee on Agency

Subcommittee Chair Abrams reported that some of the Canadian provinces adopted the recommendations of the Canadian Task Force, while others did not. Some provinces felt that if they adopted the proposals, they would have to hurry to educate the licensees and consumers.

The proposed legislation that was submitted by HAR would have amended Chapter 467, HRS. Subcommittee Chair Abrams noted that most of those organizations/agencies being sued by the DOJ were amending their rules and not their laws.

The following articles were distributed to the Commissioners for their information:

1. Inman Real Estate News, July 21, 2005 – “Agency law could harm real estate consumers;”
2. Inman Real Estate News, July 25, 2005 – “Dazed and confused over real estate agency laws;”
3. Real Estate Agents for Real Agency, Inc. – “From Horses to Houses: A Brief History of Agency and What Real Estate Agency Means for You Today;”
4. Inman Real Estate News, August 16, 2005 – “Realtor leadership should focus on consumers;”
5. Inman Real Estate News, August 2, 2005 – “Antitrust debate gives voice to real estate discounters;” and
6. Department of Justice News Release, May 12, 2005 – “The Justice Department and the Federal Trade Commission Urge the Alabama State Senate to Continue to Allow Consumer Choice in Real Estate Brokerage Services.”

Subcommittee on Applicants with Criminal/Financial/Legal Background Issues; Criminal History Record Checks

At the request of Subcommittee Chair Kagawa, the following information was distributed to the Commissioners for their information:

1. California DOJ/FBI Check via fingerprint;
2. California Application Questions on Background; and
3. California Relationship/Rehabilitation Criteria and Disciplinary Action Decisions.

Commissioner Okawa noted that more states are requiring FBI background checks and fingerprinting.

California’s regulations include the standard proposed decision language so that applicants are aware of the outcome. It also states that the licensee must inform any new employing broker of the restrictions against their license and the employing broker must sign a letter acknowledging the information.

Upon a motion by Commissioner Ball, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to change the name of the subcommittee to “Subcommittee on Background Issues; Criminal History Records Checks.”

Division and Department Programs

If the Commissioners would like to recommend a licensee for an appointment on RICO's Real Estate Advisory Committee, it could be put on the Laws and Rules Review Committee meeting agenda for consideration and forwarding to RICO.

ARELLO, Other Organizations and Jurisdictions:

ARELLO

Chair Abrams was elected as a member of ARELLO's Board of Directors at the Annual Meeting.

Upon a motion by Commissioner Okawa, seconded by Commissioner Ball, it was voted on and unanimously carried to recommend that the Commission send one Commissioner to the ARELLO Board of Directors Meetings, to be held on January 13 and 14, 2005, in St. Petersburg, Florida, subject to the Governor's fiscal policy and budgetary approval.

National Association of REALTORS®

REC Chair Nishihara and the SEO will be attending the NAR Annual Conference at the end of October. A liaison meeting is scheduled with ARELLO for October 28, 2005.

Justice Department/Federal Trade Commission to Host Joint Workshop on Competition Policy and the Real Estate Industry

The Department of Justice and the Federal Trade Commission will be hosting a joint workshop on competition policy and the real estate industry on October 25, 2005, in Washington, D.C.

Commissioner Okawa noted that the interstate commerce clause is being invoked and there are more issues involving selling things across state lines, such as time shares and tenants-in-common issues. She stressed the need to keep in touch with Hawaii's congressional delegation on these issues.

Consumer Federation of America

Information on the Consumer Federation of America's Conference, which will be held on December 1-2, 2005, was distributed to the Commissioners for their information.

Budget and Finance Report:

None.

Open Forum:

Ms. Thompson introduced Alicia Maluafiti, HAR's Director of Government Affairs, to the Commissioners.

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Next Meeting: Wednesday, November 9, 2005
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 10:03 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

November 9, 2005
Date

[] Approved as is.
[] Approved with amendments. See minutes of _____ meeting.

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